

MINUTES OF THE REGULAR MEETING OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS

FOR FEBRUARY 21, 2007

The **Regular Meeting** of the Council of Commissioners was called to order Wednesday, **February 21, 2007** in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by Chief Executive Paul Babb.

ROLL CALL

12 present, 0 absent

PRAYER

Commissioner Fay led the Commissioners in prayer.

APPROVAL OF THE MINUTES OF THE FEBRUARY 7, 2007 REGULAR MEETING

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to approve the Minutes of the February 7, 2007 Regular Meeting.

ITEMS NOT ON THE AGENDA – SUSPENSION OF THE RULES

None

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

None

CHIEF EXECUTIVE'S REPORT

Chief Executive Babb told that he had attended hearings in Helena, He said that he testified on the one that had to do with road closures. He feels it would be a good idea for this government to move forward with this to actively look at the roads that are out there that we consider to be public. Ones that we do not show as a county road we should probably have a resolution that would make those a county road and then we should post them as county roads. Then if this comes up in the future we would be pretty well covered because there are laws on the books that do cover county roads as long as it's posted and we do have jurisdiction over it. He asked the council members to be thinking about that in their districts.

He said they have been meeting with the Federal delegation to go through appropriations and get our appropriation requests in. If any council members would like to see how we've ranked those or the requests we will be sending forward, we have until March 1st. Karen Byrnes and Russ Connole are the ones that are coordinating that.

We have been putting a lot of work into the pool to analyze what we can do with the pool as it sits right now. If there is a way that it could be opened for the short term. We are working with engineers and we do have this before the Restorational Alliance so we do have a committee that is working to look at not only for the short term but for the long term as well.

Last night there was a premier on a trailer that they were showing on a documentary that's going to be called Butte, America. It was shown at the Chamber of Commerce. This is something that they are hoping to have fully funded. It will be close to a million dollar production when they get done with it. Hopefully, it will be on PBS.

At our last Regular Meeting we talked about the need to start looking at infrastructure projects. Commissioner O'Leary had a good idea, that I form an Ad Hoc Committee with three commissioners and three staff members to decide what are the infrastructure projects, what will the costs be and how do we prioritize those projects. The Committee could have something ready to go so this council can start looking at things sometime in May.

SECTION I INVITATION FOR PROPOSALS

PROPOSAL OPENING IN RESPONSE TO BUTTE-SILVER BOW REQUEST FOR QUALIFICATIONS FOR ENERGY PERFORMANCE AND OPERATIONS OPTIMIZATION SERVICES. Proof of publication was noted and placed on file. (Communication No. 07-66 being held in Committee of the Whole.)

John VanDaveer, Director of the Public Works Department, opened the sole proposal from Lost Dolphin Enterprises.

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to send the proposal back to the Public Works Department for review and report back.

SECTION II INVITATION FOR BIDS

SEALED BIDS FOR THE PURCHASE OF APPROXIMATELY 1000 TONS OF 120/150 PENETRATION GRADE ASPHALT CEMENT (PERFORMANCE GRADE 58-28) WITH 0.5% ANTI-STRIPPING AGENT 200 TONS OF CRS-2P

CATIONIC EMULSIFIED ASPHALT. **Proof of publication was noted and placed on file. (Communication No. 07-73 being held in Committee of the Whole).**

John VanDaveer, Director of the Public Works Department opened the following bids:

	<u>120/150 Asphalt</u>	<i>CRS – 2P</i>	<u>Total</u>
Montana Refining	\$374.50		\$374,500.00
		\$399.50/ton	\$79,900.00
Sem Materials Billings, MT	no bid	\$400.99/ton	\$80,198.00
CHS, Inc., Laurel, MT	\$378.52/ton		\$378,520.00
		\$401.02	\$80,204.00
Brenntag Pacific, Inc. Billings, MT	no bid	no bid	
	<u>Reclamite</u> \$712.00/ton		\$106,800.00
	<u>CRF Emulsion</u> \$720.00/ton		\$ 18,000.00

It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to send the bids to the Public Works Department for review and report back.

SECTION II-A

INVITATION FOR BIDS

SEALED BIDS FOR WATER MAIN RENEWAL. (Communication No. 07-85 being held in Committee of the Whole) Proof of publication was noted and placed on file.

John VanDaveer, Director of the Public Works Department, opened the following bids:

Hollow Contracting Butte, MT	\$1,941,832.00
H & H Contracting, Inc. Butte, MT	\$1,910,180.00
Ed Boland Construction Great Falls, MT	\$2,451,410.70

Western Municipal Construction
Billings, MT \$2,436,042.00

It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to send the bids to the Public Works Department for review and report back.

SECTION III INVITATION FOR BIDS

SEALED BIDS FOR ONE (1) NEW 2007 HOT ASPHALT AND SANDING MACHINE. Proof of publication was noted and placed on file. (Communication No. 07-74 being held in Committee of the Whole.)

John VanDaveer, Public Works Department Director, opened the sole bid from Northwest Manufacturing and Distributing in Billings in the amount of \$65,000.00

It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to send the bid to the Public Works Department for review and report back.

SECTION IV CONSENT AGENDA

- A.**
 - 1. COMMITTEE OF THE WHOLE MEETING REPORT
 - 2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
 - 3. JUDICIARY COMMITTEE MEETING REPORT
 - 4. PUBLIC WORKS COMMITTEE MEETING REPORT

B. COMMUNICATIONS

Before entertaining a motion for approval of the Consent Agenda, Chief Executive Babb called for any segregations. Commissioner Sorich segregated the Finance and Budget Committee Meeting Report. Commissioner O’Leary segregated Section B, No. 5, Communication No. 07-91. Commissioner Frasz called for a “friendly amendment” under Section 4 of the Consent Agenda, Public Works Committee for just housekeeping it should read “We, your Public Works Committee, respectfully recommend as follows”.

It was then moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1, 3 and 4 and under Section B, Items 1 through 20 exclusive of No. 5.

FINANCE AND BUDGET COMMITTEE MEETING REPORT

Commissioner Sorich, the current recommendation for Section 1 through 10 is “approved as submitted” and it doesn’t say to “place on file” so he just makes it as a “friendly amendment” to add “place on file” to these communications. This was in the form of a motion. Commissioner Coleman seconded the motion and it carried by a unanimous verbal vote.

Communication No. 07-91 – Jeffrey L. Miller, Director of Fire Services, requesting authorization for Chief Executive to enter into contract with General Fire Equipment Company.

Commissioner O’Leary stated there has been some questions brought up by one of the bidders on this. He called on Jeff Miller. Jeff Miller explained a bid opening was conducted on January 31st for the purchase of new 1250 gpm fire apparatus for the Home Atherton Fire Department. Two bids were received at that time. One was General Fire Apparatus from Spokane, Washington and the second bidder was Montana Fireworks of Bozeman, Montana. General Fire Apparatus’ bid was \$240,611.00. Montana Fireworks actually submitted two different proposals with two different bid amounts. Their bid for Package #2 was in the amount of \$254,713, 44. The bid for Package #1 was \$221,124.28. The bid for \$254,713.44 followed the bid specifications that were developed by the Fire Department very closely. The bid for \$221,124.28 has several deviations from the actual bid specifications. They were not explained in the bid documents. County Attorney McCarthy explained that this bid is non-confirming and can’t be considered. Commissioner O’Leary made a motion to concur with the request in Communication No. 07-91 and place the communication on file. Commissioner Lee seconded the motion and it carried with a unanimous verbal vote.

SECTION V COMMUNICATIONS TO BE READ AND ACTED UPON

1. 07-97 Paul Babb, Chief Executive, requesting approval of appointment of Roger Ebner as Emergency Management Coordinator. **It was moved by Commissioner O’Leary, seconded by Commissioner Lee to concur with the request and placed on file. It carried with a unanimous verbal vote.**

2. 07-104 Paul Babb, Chief Executive, requesting concurrence in appointments to Law Enforcement Commission.

Chief Executive Babb requested to withdraw Communication No. 07-104. There are some things he has to work on as far as the term goes. **It was moved by Commissioner O’Leary, seconded**

by Commissioner Lee and carried with a unanimous verbal vote to place Communication No. 07-104 on file.

SECTION VI

**ORDINANCES AND RESOLUTIONS
REFERRED TO JUDICIARY**

**1. COUNCIL BILL NO. 07-3
ORDINANCE NO. 07-3**

AN ORDINANCE AMENDING CHAPTER 10.52 OF THE BUTTE-SILVER BOW MUNICIPAL CODE ENTITLED "PARKING"; AMENDING SECTION 10.52.020 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC); PROVIDING THAT PARKING BE PROHIBITED ALONG THE WEST CURB LINE OF FARRAGUT AVENUE A DISTANCE OF 60 FEET NORTH FROM ITS INTERSECTION WITH AMHERST AVENUE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

2. COUNCIL RESOLUTION NO. 07-9

A RESOLUTION DECLARING THE INTENTION OF THE COUNCIL OF COMMISSIONERS OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, MONTANA TO CREATE A SPECIAL LIGHTING DISTRICT, TO BE KNOWN A SPECIAL IMPROVEMENT LIGHTING DISTRICT NO. 1027, FOR THE PURPOSE OF DIRECTING, EQUIPPING, MAINTAINING, AND INSTALLING AN ELECTRICAL LIGHTING SYSTEM; DESIGNATING AND DESCRIBING THE BOUNDARIES OF SAID PROPOSED SPECIAL IMPROVEMENT LIGHTING DISTRICT; STATING THE PURPOSE OF AND GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE IN SAID SPECIAL IMPROVEMENT DISTRICT; ESTIMATING THE APPROXIMATE COST THEREOF FOR THE FIRST YEAR; FINDING, DETERMINING AND DECLARING THAT PROPERTY WITHIN SAID SPECIAL IMPROVEMENT DISTRICT WILL BE ESPECIALLY BENEFITED AND AFFECTED BY SUCH PROPOSED IMPROVEMENT; DECLARING THAT SUCH PROPERTY SHOULD BE ASSESSED FOR THE COST THEREOF OF MAINTENANCE AND ENERGY AND EXTENDING SUCH ASSESSMENTS TO BE IN ANNUAL INSTALLMENTS AND PROVIDING FOR THE FUNDS UPON WHICH SAID SPECIAL IMPROVEMENT ENERGY AND MAINTENANCE FUNDS SHALL BE DRAWN; PROVIDING FOR THE PUBLICATION AND GIVING OF NOTICE OF THE PASSAGE AND ADOPTION OF THIS RESOLUTION AND PROVIDING FOR AND PROVIDING FOR AN EFFECTIVE DATE HEREIN

SECTION VII

ORDINANCES – 2ND READING

1. COUNCIL BILL NO. 07-2 ORDINANCE NO. 07.2

AN ORDINANCE AMENDING CHAPTER 10.48 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “MISCELLANEOUS DRIVING RULES”; ADDING A NEW SECTION ENTITLED “DRIVING WITHOUT MOTOR VEHICLE INSURANCE PROHIBITED” TO BE NUMBERED SECTION 10.48.165; PROVIDING FOR A SURCHARGE AS SET FORTH IN SECTION 10.96.010 AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a roll call vote of 12 yeas and 0 nays to place Council Bill No. 07-2, Ordinance No. 07-2 on second reading and passed having been deemed fully read at length.**

SECTION VIII

ORDINANCES AND RESOLUTIONS – FINAL READING

1. COUNCIL BILL NO. 06-12 ORDINANCE NO. 06-12

AN ORDINANCE AMENDING BUTTE-SILVER BOW ORDINANCE NO. 239 AND CHAPTER 2.64 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “HISTORIC PRESERVATION COMMISSION”; REPEALING CHAPTER 17.33 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “H HISTORIC OVERLAY ZONE”; PROVIDING FOR THE PRESERVATION, PROTECTION, AND PROMOTION OF HISTORIC PROPERTIES, APPOINTMENT AND QUALIFICATION OF MEMBER, DUTIES AND RESPONSIBILITIES OF THE HISTORIC PRESERVATION COMMISSION; APPOINTMENT AND DUTIES OF THE LOCAL HISTORIC PRESERVATION OFFICER; CREATION OF A LOCAL REGISTER AND ITS DESIGNATION AND PROCEDURES; CREATION AND ADMINISTRATION OF DESIGN REVIEW PROTECTION FOR LOCAL REGISTER PROPERTIES; CREATION AND REVIEW OF LOCAL PRESERVATION INCENTIVES; DEVELOPMENT AND PUBLICATION OF HISTORIC PRESERVATION GUIDELINES; REVIEW AND AUTHORIZATION OF DEMOLITION PERMITS ON HISTORIC PROPERTIES; CREATION OF DEMOLITION BY NEGLECT PROCEDURES ON HISTORIC PROPERTIES; ENFORCEMENT OF THIS ORDINANCE; REPEALING BUTTE-SILVER BOW ORDINANCE NO. 238 IN ITS ENTIRETY AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

It was moved by Commissioner O’Leary and seconded by Commissioner Lee to place Council Bill No. 06-12, Ordinance No. 06-12 on final reading and passed having been deemed fully read at length.

On the question, Commissioner Coleman said he would like to make a substitute motion to amend Section 4, subsection X by just four words and one slash. Remove Historic Property and/or to re-read to prevent deterioration of local register property or any part thereof. Commissioner Sheehy seconded the motion. Commissioner O’Leary asked the County Attorney if there was a requirement that on the final reading of an ordinance that any changes to the ordinance must be in written form. County Attorney replied that was correct. **Commissioner Coleman then moved that we refer this back to the Judiciary Committee for one final review to look at the amendment as proposed with a return to Committee of the Whole. Commissioner Sheehy seconded the motion.** On the question, Commissioner O’Leary said he thinks we should go ahead and pass this ordinance tonight. Then down the road if we see problems that this ordinance creates for anyone, at that time any one of us could write a letter asking that this ordinance be amended and then we would follow the normal process. Chief Executive Babb said the question the County Attorney has raised is March 31st – is that a date that has significance? It does because that is the date that the state has given us to have the ordinance complete and in our normal process that’s going to put us at April 7th. We asked for an extension so that there could be further deliberation and it is something that they granted us. After that is when we will be placed back on probation. Mr. McCarthy further explained that if the ordinance were to be sent back to the Judiciary Committee it could be considered and amended on the 28th of February. It would then go back to the council for final reading on March the 7th. It can’t be effective until at least thirty days so the earliest it would be effective would be April the 6th. Chief Executive called for a roll call vote on the substitute motion of Mr. Coleman’s. **The motion failed with a roll call vote of 3 yeas and 9 nays. The yea votes were Commissioners Coleman, Sheehy and Moodry.**

Back to the original motion, Commissioner O’Leary moved that Council Bill and Ordinance No. 06-12 be passed on final reading having been deemed fully read at length. The motion was seconded by Commissioner Lee and carried with a voice roll call of 11 yeas and 1 nay. Commissioner Coleman voted Nay.

**2. COUNCIL BILL NO. 07-1
ORDINANCE NO. 07-1**

AN ORDINANCE AMENDING SUBSECTION 9.01 OF SECTION 4 OF BUTTE-SILVER BOW ORDINANCE NO. 204 AND SECTION 10.32.010(i) OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC) ENTITLED “STOP SIGNS”; PROVIDING THAT TRAFFIC PROCEEDING ALONG

IDAHO STREET SHALL STOP BEFORE ENTERING THE INTERSECTION OF IDAHO STREET AND JOSETTE AVENUE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried with a roll call vote of 12 yeas and 0 nays.**

3. COUNCIL RESOLUTION NO. 07-05

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE RML MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried with a roll call vote of 12 yeas and 0 nays.**

4. COUNCIL RESOLUTION NO. 07-06

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE KELLEY MINOR SUBDIVISION – SUMMARY REVIEW OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried with a roll call vote of 12 yeas and 0 nays.**

5. COUNCIL RESOLUTION NO. 07-08

A RESOLUTION ACCEPTING THE DONATION OF LOT 5 IN BLOCK 9 OF THE PLYMOUTH ADDITION AND LOT 11 OF THE SILVER JOE AND CARRIE LODE LOCATED IN SECTION 13, TOWNSHIP 3 NORTH, RANGE 8 WEST, P.M.M. TO THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a roll call vote of 12 yeas and 0 nays.**

ADJOURN

There being no further business to come before the Council, it was moved by Commissioner O'Leary, seconded by Commissioner Bury and carried by a unanimous verbal vote to Rise to the Call of the Chair.

The meeting adjourned at 8:40 PM.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER.